IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 4TH JANUARY 2007 / 14TH PAUSHA 1928

WP(C).No. 19849 of 2006(K)

PETITIONER:

V.K.UTHAMAN PILLAI,
S/O.R.KRISHNAN PILLAI,AGED 54 YEARS,
INSPECTOR, KSRTC,THRISSUR AND RESIDING AT
VADAKKECHANIYIL,KULASEKARAMANGALAM P.O.
VAIKOM.

BY ADV. SRI.N.UNNIKRISHNAN
SMT.A.SAGEENA

RESPONDENTS:

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1. THE KERALA STATE ROAD TRANSPORT
CORPORATION,TRANSPORT BHAVAN, FORT,
THIRUVANANTHAPURAM, REP.BY ITS MANAGING DIRECTOR.

2. THE DISTRICT TRANSPORT OFFICER,
KSRTC,THRISSUR.

BY ADV. SRI.K.PRABHAKARAN, SC, K.S.R.T.C.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 04/01/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC : 19849/2006

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE ORDER DT.6.12.05 IN RP NO.9/05 BEFORE THE KSRTC APPELLATE TRIBUNAL.

EXT.P2 : TRUE COPY OF THE MEMORANDUM NO.PL11/000307/06 DT.14.03.06 OF THE FIRST RESPONDENT.

EXT.P3 : TRUE COPY OF THE REPRESENTATION DT.20.6.06 SUBMITTED BY THE PETITIONER TO THE FIRST RESPONDENT.

/TRUE COPY/

PIUS C. KURIAKOSE, J.

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W.P.(C) No.19849 OF 2006

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DATED THIS THE 4TH JANUARY, 2007

J U D G M E N T

The grievance of the petitioner, an employee of the K.S.R.T.C. who was ordered to be compulsorily retired in disciplinary proceedings initiated under Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 is that notwithstanding Ext.P1 order of the K.S.R.T.C. Appellate Tribunal setting aside the order of the disciplinary authority, the petitioner is not being paid the consequential benefits. Disciplinary proceedings were initiated against the petitioner while he was working as Special Grade Conductor and vide order No.VLD1/02676/03 dated 7.10.2004 issued by the Industrial Relations Manager, he was compulsorily retired from service. He filed R.P.No.9 of 2005 before the K.S.R.T.C. Appellate Tribunal which by order dated 6.12.2005 allowed the R.P. and setting aside the impugned order directed reinstatement of the petitioner into service with all consequential benefits. Ext.P2 memorandum of the 1st respondent-Corporation dated 14.3.2006 will show that the petitioner has been ordered to be reinstated to duty with all consequential benefits. Pursuant to Ext.P2, the petitioner was reinstated to duty on 15.3.2006 at Vaikom Depot. The petitioner submits that during the pendency of

the disciplinary proceedings, the respondents had promoted his juniors to the post of Station Master and that of Inspector and on the basis of Exts.P1 and P2 he is also entitled to promotion with seniority over those juniors. The petitioner was later promoted with effect from 10.3.2006 as Station Master and Inspector. But these promotions were notional promotions and the petitioner is aggrieved by the notionality given to these promotions. He submits that for the period from 7.10.2004 to 15.3.2006 during which he was kept out of service, he was not paid anything. The petitioner submitted Ext.P3 representation dated 20.6.2006 before the Managing Director of the 1st respondent-Corporation requesting that the monetary benefits due to him on the basis of the order of the Appellate Tribunal be released immediately. He complains that till date the monetary benefits due to him by way of salary arrears, H.R.A., festival allowance and other allowances have not been released, though he is being pressed hard by his creditors for repayment of the amounts he had contracted from them as loans. On the various grounds raised in the Writ Petition, the petitioner prays for a declaration that the respondents are liable to release the consequential benefits like arrears of salary, H.R.A., Bonus for the period from 7.10.2004 to 15.3.2006 and for other related

reliefs including payment of interest for delayed payment of the amounts due.

2. Through their Deputy Law Officer, the K.S.R.T.C. has filed a counter affidavit. While the averments of the petitioner regarding the disciplinary proceedings are not denied, it is contended therein that in accordance with the directions contained in the order of the Appellate Tribunal, the petitioner was reinstated to duty vide Ext.P2 order. The period of break in service from 11.10.2004 till 14.3.2006 is ordered to be reckoned as duty for the purpose of pension and gratuity and "all other benefits except salary and other financial benefits for the period he had abstained from duty. He had been given promotion to the posts of Station Master and Inspector with effect from the consecutive days he had been reinstated to service. He had not performed actual duty for the period from 11.10.2004 to 14.3.2006. Hence he had not been paid salary and other financial benefits for the period of absence". Finally, the counter affidavit concludes that the declaration and the directions sought for cannot be granted since the petitioner has not actually worked during the period from 7.10.2004 till 15.3.2006.

3. Refuting the contentions, the petitioner has filed a reply

affidavit. It is pointed out therein that the charges on the basis of which the petitioner was proceeded against were totally biased, prejudicial and baseless and it has been so found by the Appellate Tribunal. The Appellate Tribunal came down heavily upon the Inspector, the maker of the allegations. Having conceded that the order of compulsory retirement passed by the disciplinary authority was set aside by the Appellate Tribunal and having claimed that the Tribunal's order has been implemented, it is not open to the respondents to contend that the consequential benefits will not be given. The reply affidavit takes strong exception to the allegation that the petitioner abstained from duty. It is contended that the petitioner never abstained from duty. He was actually prevented by illegal proceedings and orders of the respondents. The 1st respondent being subordinate to the Appellate Tribunal is not entitled to sit in judgment over Ext.P1 order.

4. Heard Sri.N.Unnikrishnan, counsel for the petitioner and Sri.K.Prabhakaran, Standing Counsel for the K.S.R.T.C.

5. Sri.Unnikrishnan would refer me to Exts.P1 and P2 as well as to the pleadings raised by the parties in this case, particularly the reply affidavit. He would place before me a copy of the Manual of

Disciplinary Proceedings and would particularly refer to para.16(10) therein which says that where a competent authority holds that the Government servant has been fully exonerated or, in the case of suspension, that it was wholly unjustified, the officer shall be given the full pay to which he would have been entitled had he not been dismissed, removed, compulsorily retired or suspended, as the case may be, together with any allowances of which he was in receipt prior to his dismissal, removal, retirement or suspension.

6. Sri.K.Prabhakaran would defend the stand of the K.S.R.T.C. taken by them through their counter affidavit.

7. Having considered the rival submissions in the light of the rival pleadings, I am of the view that the petitioner is entitled for relief. Ext.P1 order of the Appellate Tribunal has attained finality and the said order is binding on the K.S.R.T.C. A perusal of Ext.P1 will show that the order passed by the disciplinary authority compulsorily retiring the petitioner from service has been set aside holding that the impugned order was totally unwarranted and unsupported by any evidence on record. This being the position, the respondents are not justified in contending that the petitioner abstained from duty. The truth is that the petitioner was wrongly kept away from duty by the respondents.

The liability to give effect to Ext.P1 order is not disputed. In fact, it is claimed that Ext.P1 order is given effect to. The monetary benefits during the relevant period are denied on the ground that the petitioner did not actually work during that period. The respondents do not have a case at all that during the relevant period the petitioner was gainfully employed elsewhere. In fact, the contention of the petitioner that he was in penury and had to borrow from outside is not seen disputed. Para.16(10) of the Manual of Disciplinary Proceedings is to be given effect to.

The result of the above discussion is that the Writ Petition will stand allowed. There will be a declaration that the respondents are liable to release all the consequential benefits such as arrears of salary, H.R.A., Bonus for the period from 7.10.2004 till 15.3.2006 to the petitioner within a period of two months of receiving a copy of this judgment. The parties will bear their respective costs.

(PIUS C. KURIAKOSE, JUDGE)

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